SINNIAH PAMPAYAN

v.

MUTHUVELU PILLAI PALANICHAMY PILLAI

COURT OF APPEAL, KUALA LUMPUR
DATO' V.C. GEORGE JCA
DATO' ABU MANSOR ALI JCA
DATO' K.C. VOHRAH J
[CIVIL APPEAL NO: A-02-233 OF 1994]
27 JANUARY 1996

CONTRACT: *Agreement - Sale and purchase of house - Construction of terms - Agreement giving respondent contingent right to own house in future after paying price in full - Sale of house during subsistence of agreement - Whether only amounted to sale of contingent right - Whether valid.*

By an agreement executed in 1970, the respondent agreed to buy a house from the State Government of Perak upon certain terms and conditions. One of the conditions was that the respondent would only own the house after paying in full the price of RM3039.70 therefor within 17 years. The agreement prohibited the respondent from selling, transferring or charging the house, and also stated that a breach of it would entitle the Government to terminate the same on a month's notice.

While the agreement was still in force, the respondent gave a power of attorney to the appellant to sell the house, and the appellant, acting under the said power of sale, through a written agreement, sold the house to one Palanisamy a/l Pampayan. The Court below held that although the power of attorney was valid, the purported sale of the house was void because (i) it was founded upon the mistaken belief that the house belonged to the respondent when in fact it belonged to the State Government and (ii) the sale was opposed to public policy. In this appeal, triggered by the respondent's move to claim possession of the house, which the Court below had allowed, a question arose as to whether the sale of the house to Palanisamy was valid, bearing in mind the terms of the respondent's agreement with the State Government.

Held:

Per K.C. Vohrah J (delivering the judgment of the Court):

[1] By his agreement with the State Government, what the respondent in fact had was a contingent right to own the house, a right to own the premises in the future provided he paid the monthly instalments and provided the purchase price was paid within 17 years. The agreement entered into between the respondent through the appellant as his attorney and Palanisamy was in respect of his right to own the premises in the future, a contingent right.

[2] Consequently, all that was sold to Palanisamy is a right arising under the agreement made between the respondent and the State Government to purchase and own the house in the future provided certain conditions were fulfilled. The issue of mistake does not at all arise.

[3] The agreement between the respondent and the State Government does not contain a provision purporting to impose conditions on the land once it is transferred to him. It is therefore clear that the rsespondent could sell, and in fact merely sold this right to own the premises in the future albeit contingent on the three conditions. The respondent could validly pass title to Palanisamy once the land was transferred to himself by the State Government provided that the issue document contains no conditions or restrictions but that is not an issue here. The agreement made between the appellant and Palanisamy is thus valid and the Court below was wrong in deciding otherwise.

[Appeal allowed. Order of Court below as to costs, vacant possession and mesne profits set aside]

***[Bahasa Malaysia** Translation of Headnotes]*

***KONTRAK:** Perjanjian - Penjualan dan Pembelian rumah - Pentakrifan terma-terma - Perjanjian memberikan responden hak kontinjen untuk memiliki rumah di masa akan datang selepas membayar harga sepenuhnya - Penjualan rumah ketika perjanjian masih berkuatkuasa - Sama hanya merupakan penjualan hak kontinjen - Samada sah.*

Melalui satu perjanjian yang disempurnakan dalam tahun 1970, responden telah bersetuju untuk membeli sebuah rumah daripada Kerajaan Negeri Perak atas terma-terma dan syarat-syarat yang tertentu. Salah satu daripada syaratnya adalah bahawa responden akan hanya memiliki rumah tersebut setelah membayar sepenuhnya harga sebanyak RM3039.70 baginya dalam tempoh selama 17 tahun. Perjanjian tersebut melarang responden daripada menjual, memindahkan atau melepaskan rumah itu, dan juga menyatakan bahawa kemungkiran akan syarat-syarat itu akan memberikan hak kepada kerajaan untuk menamatkannya dengan satu bulan notis.

Ketika perjanjian itu masih berkuatkuasa, responden telah memberi kuasa wakil kepada perayu untuk menjual rumah itu, dan perayu, bertindak di bawah kuasa jualan tersebut, melalui satu perjanjian bertulis, telah menjual rumah itu kepada Palanisamy a/l Pampayan. Mahkamah dibawah memutuskan bahawa, walaupun kuasa wakil yang berkenaan sah, penjualan rumah tersebut adalah tidak sah oleh kerana (i) penjualan itu dilandaskan kepada tanggapan yang salah bahawa rumah tersebut dimiliki oleh responden sedangkan tuanpunya sebenar ialah Kerajaan Negeri dan (ii) penjualan tersebut adalah bertentangan dengan kepentingan awam. Dalam rayuan ini, yang disebabkan oleh usaha responden menuntut semula milikan rumah tersebut, yang mana telah dibenarkan oleh

Mahkamah di bawah, persoalan berbangkit mengenai samada penjualan rumah tersebut kepada Palanisamy merupakan satu perjualan yang sah, mengambil kira terma-terma perjanjian yang telah dimasuki di antara responden dengan Kerajaan Negeri.

Diputuskan:

Oleh K.C. Vohrah H (menyampaikan penghakiman Mahkamah):

[1] Melalui perjanjiannya dengan Kerajaan Negeri, apa yang pada hakikatnya diperolehi oleh responden adalah satu hak kontinjen untuk memiliki rumah itu, satu hak untuk memiliki premis tersebut di masa akan datang dengan syarat beliau membayar ansuran-ansuran bulanan dan dengan syarat beliau membayar harganya dalam tempoh 17 tahun. Perjanjian yang dimasuki antara responden dan Palanisamy melalui perayu sebagai wakil responden adalah berhubung dengan haknya untuk memiliki premis tersebut di masa akan datang, satu hak kontinjen.

[2] Akibatnya apa yang telah dijual kepada Palanisamy adalah hak yang berbangkit di bawah perjanjian tersebut yang telah dibuat antara responden dan Kerajaan Negeri untuk membeli dan memiliki rumah di masa akan datang dengan syarat beberapa terma dipenuhi. Isu kesilapan tidak berbangkit sama sekali.

[3] Perjanjian antara responden dan Kerajaan Negeri tidak mempunyai peruntukan yang bermaksud untuk mengenakan syarat-syarat ke atas tanah tersebut sebaik sahaja ianya dipindahmilik kepada beliau. lanya dengan itu jelas bahawa responden boleh menjual, dan pada hakikatnya hanya telah menjual hak ini, yakni hak untuk memiliki premis tersebut di masa akan datang, walaupun tertakluk kepada ketiga-tiga syarat berkenaan. Responden boleh dengan sahnya memberi hakmilik kepada Palanisamy sebaik sahaja tanah itu dipindahmilikkan kepada beliau oleh Kerajaan Negeri dengan syarat bahawa dokumen hakmilik keluaran tidak mengandungi syarat-syarat atau sekatan-sekatan tetapi perkara ini tidak menjadi isu di sini. Perjanjian yang telah dibuat responden dan Palanisamy adalah dengan itu sah dan Mahkamah di bawah adalah salah dalam memutuskan sebaliknya.

[Rayuan dibenarkan. Perintah Mahkamah di bawah berhubung dengan kos, milikan kosong dan hasil mesne diketepikan]

Cases referred to:
Chop Ngoh Seng v. Esmail & Ahmad Bros [1948-49] MLJ Supp. 93 ***(cit)***
Robin & Anor. v. Goh Boon Chow [1965] 2 MLJ 215 ***(cit)***
Hamzah bin Musa v. Fatimah Zaharah bte Mohamed Jalal [1982] 1 MLJ 361 ***(cit)***
Kersah La'usin v. Sikin Menan [1966] 2 MLJ 20 ***(foll)***
Brickles v. Snell [1916] AC 599 ***(foll)***

Legislation referred to:
Contracts Act 1950, ss. 21, 24(e)

For the appellant - Porres P Royan; M/s. N.P. Ramachandran & Assoc
For the respondent - Minderjit Kaur; M/s. Minderjit & Co.

JUDGMENT

K.C. Vohrah J:

We allowed the appeal in this case and now elaborate on the reasons for doing so.

It is not disputed that there was a written agreement entered into between the respondent (the plaintiff) and the State Government of Perak on 4 March 1970 in respect of House No. 43 Pokok Assam under the Rancangan Rumah Semua Kaum. Under the agreement it is stated that, subject to several terms and conditions, the State Government was desirous of leasing the premises to the plaintiff and the plaintiff intended to own the premises. The plaintiff agreed to buy the premises for RM3039.70 within 17 years from the date of sale and to pay monthly instalments in accordance with the amount that was to be fixed by the State Government from time to time. The plaintiff also agreed not to allow any person apart for himself and his family to occupy the premises without the permission of the State Government or to sell, transfer, charge or release the said premises.

Another term in the agreement provides that if there should be any breach of the contract by the plaintiff, the State Government was entitled to terminate the agreement after one month's notice to him.

It is to be noted that the conditions relating to the occupation, transfer, charge or release of the premises are contained in a contract and are not conditions imposed under the provisions of the National Land Code. But of course the conditions affect the plaintiff during the subsistence of the agreement and do not continue beyond the agreement to affect the land after it has been transferred to the plaintiff unless such conditions are conditions and restrictions in interest in the issue document of title affecting the land under ss. 120 to 122 of the National Land Code. The point to note is that it is not the issue document of title which was relevant at the trial but the terms of the agreement which enure only during the subsistence of the agreement.

We now turn to another aspect of the case. The learned Judicial Commissioner before whom the trial was held found as a fact that the plaintiff had given a valid power of attorney to the appellant (the 1st defendant) to sell the house and that the 1st defendant, acting under the power of sale, had effected the sale of the said house to Palanisamy a/l Pampayan (the 2nd defendant) under a written agreement and that the plaintiff had failed to prove beyond reasonable doubt that the sale was fraudulent. We see no reason to disturb these findings of facts.

The learned Judicial Commissioner also held that this written agreement was void on two grounds, firstly, because the purported sale was founded on the mistaken belief that the house belonged to the plaintiff whereas the house belonged to the State Government and, secondly, because the sale was opposed to public policy.

As regards the first ground the learned Judicial Commissioner was of the view that the language of the agreement (between the plaintiff and the 2nd defendant) was clear to show that the purported sale was founded on the mistaken belief by both parties that the house belonged to the plaintiff and was therefore void under s. 21 of the Contracts Act 1950. He relied on *Chop Ngoh Seng v. Esmail & Ahmad Bros* [1948-49] MLJ Supp. 93; *Robin & Anor. v. Goh Boon Chow* [1965] 2 MLJ 215 for such view. There is nothing, however, in the agreement between the State Government of Perak and the plaintiff to say that the plaintiff owned the house. It is against the weight of evidence to take the view that the plaintiff was under a mistaken belief that he owned the house. He could not have been mistaken as he was a party to that agreement. And that same agreement was handed over to the 2nd defendant as is acknowledged in the agreement between the 2nd defendant and the plaintiff. All that was sold, as will be shown later, is a right, arising under the agreement made between the plaintiff and the State Government, to purchase and own the house in the future provided certain conditions were fulfilled. The issue of mistake whether mutual or unilateral does not at all arise.

The learned Judicial Commissioner was also of the view that the agreement is void under s. 24(e) of the Contracts Act 1950 as being against public policy. He was of the view that the policy of the State Government was to provide housing for the poor and that was why the agreement restricted the plaintiff from selling, transferring, charging or releasing the property to another person; the sale by the plaintiff to the 2nd defendant of the house contravened s. 24(e) of the Contracts Act 1950 as it was injurious to good government in the field of domestic affairs and its object was economically against the public interest, relying on *Hamzah bin Musa v. Fatimah Zaharah bte Mohamed Jalal* [1982] 1 MLJ 361.

With respect no such issue of the sale being void properly arises. It is clear that the plaintiff could not and in effect did not sell the premises to the 2nd defendant. Under the agreement he had with the State Government the plaintiff's right to own the premises was in the future. The purchase price was fixed and he had to complete the payment of the price within 17 years from the date of the signing of the agreement. And the payment of the monthly instalments was towards the purchase price. What the plaintiff in fact had was a contingent right to own the house, a right to own the premises in the future provided he paid the monthly instalments and provided the purchase price was paid within 17 years. And one has to remember the other proviso in the agreement which provides that the agreement could be terminated by the Government by the giving of one month's notice, for breach of the agreement by the plaintiff.

The agreement entered into between the plaintiff through the 1st defendant as his attorney and the 2nd defendant was in respect of this right to own the premises in the future, a contingent right. The agreement between the plaintiff and the State Government, it will be noted, does not contain a provision purporting to impose conditions on the land once it is transferred to him. The agreement as has been noted earlier, is nothing more than an ordinary contract. It is clear that the plaintiff could sell and, in fact, merely sold this right to own the premises in the future albeit contingent on the three conditions earlier stated. The plaintiff could validly pass title to the 2nd defendant once the land was transferred to himself by the State Government provided that the issue document contains no conditions or restrictions but that is not in issue in this case.

The opinion of Raja Azlan Shah J (as His Royal Highness then was) in *Kersah La'usin v. Sikin Menan* [966] 2 MLJ 29 at 23, (where the Privy Council case of *Brickles v. Snell* [1916] AC 599 was relied upon) succintly states the relevant law thus:

> Actual possession of both the legal estate and any equitable rights are not prerequisites so long as the vendor is in such a position that when the time for completion comes he will be in a position to pass the title to the purchaser. In these circumstances the contract is good but only in equity.

We had observed earlier that the plaintiff and the 2nd defendant were aware that what was being bought was a future right on the part of the plaintiff to own the premises. In connection with this, there was also this provision in the agreement between them which reads:

> It is hereby agreed that the purchaser ... shall pay the balance payment of the said premises to the State Government by monthly instalments and obtain receipts in the name of the original owner who has agreed to transfer to the title of the said premises to the purchaser completion of payment for the said premises.

Clearly it must have been with this mind that the 2nd defendant was allowed to occupy the premises but there is no evidence that the State Government did not allow such an arrangement and in any event there is no evidence that the State Government had sent a notice to the plaintiff terminating the agreement between the plaintiff and the State Government on account of that or for any other reason. We therefore cannot agree with the finding of the learned Judicial Commissioner that the agreement made between the plaintiff and the 2nd defendant is void.

We thus allowed the appeal of the defendant with costs here and below and set aside the order of vacant possession. Although the learned Judicial Commissioner in his grounds of decision had stated that he did not order mense profits the notes of proceedings show that he gave judgment to the plaintiff without reservation and the order under the hand of the Senior Assistant Registrar shows it as being incorporated in the sealed order. The order for mense profits was also therefore set aside.

Reported by W.A. Sharif